

SEP 27 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

FELIPE OCHOA-ORTUNO,

Petitioner,

v.

PETER D. KEISLER, * Acting Attorney
General,

Respondent.

No. 06-70336

Agency No. A26-967-986

MEMORANDUM **

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Felipe Ochoa-Ortuno, a native and citizen of Mexico, petitions for review of

* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

the Board of Immigration Appeals’ (“BIA”) order denying his motion to reconsider its order denying his motion to reopen based on ineffective assistance of counsel. To the extent we have jurisdiction, it is governed by 8 U.S.C. § 1252. We review the denial of a motion to reconsider for abuse of discretion, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Ochoa-Ortuno’s September 20, 2005 motion to reconsider as untimely. *See* 8 C.F.R. § 1003.2(b)(2) (motions to reconsider must generally be filed within thirty days of the agency decision). Consequently, we do not reach Ochoa-Ortuno’s contentions that the motion should have been granted on the merits.

We lack jurisdiction to review the BIA’s refusal to invoke its authority to reconsider *sua sponte* under 8 C.F.R. § 1003.2(a). *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002) (noting that “the decision of the BIA whether to invoke its *sua sponte* authority is committed to its unfettered discretion.”).

PETITION FOR REVIEW DENIED in part and DISMISSED in part.